



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Doc. No. AMS-FV-13-0069; FV13-915-3 FR]

Avocados Grown in South Florida and Imported Avocados;

Clarification of the Avocado Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the minimum grade requirements currently prescribed under the Florida avocado marketing order (order) and makes a technical correction to the avocado import regulation. The order regulates the handling of avocados grown in South Florida, and is administered locally by the Avocado Administrative Committee (Committee). For South Florida-grown avocados, this rule aligns the regulations with current industry practices. It removes language permitting the commingling of avocados with dissimilar characteristics in containers for shipment within the production area. All avocado shipments within the production area need to meet the provisions of a U.S. No. 2 grade, as provided in the United States Standards for Grades of Florida Avocados. For imported avocados, this rule also makes a technical correction to the avocado import regulation to clarify that

the minimum grade requirements for imported avocados remains unchanged at a U.S. No. 2.

DATES: Effective November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would

rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule revises the grade requirements currently prescribed under the order and the avocado import regulation. This rule removes language permitting the commingling of avocados with dissimilar characteristics for shipment within the production area. This requires all avocados shipped within the production area to meet the provisions of a U.S. No. 2 grade, as provided in the United States Standards for Grades of Florida Avocados. This rule also makes a technical correction to the avocado import regulation to clarify that the minimum grade requirement for imported avocados remains unchanged at a U.S. No. 2.

Section 915.51 of the order provides, in part, authority to issue regulations establishing specific grade and pack requirements for avocados. Section 915.52 of the

order provides authority for the modification, suspension, or termination of established regulations.

Section 915.306 of the order's container and pack regulations prescribe grade, pack, and container marking requirements for Florida avocados. Paragraph (a)(1) of that section prescribes, in part, the grade requirements for avocados shipped within the production area. Minimum grade and size requirements for avocados imported into the United States are currently in effect under § 944.28.

In reviewing the Florida avocado regulations, it was noted that paragraph (a)(1) of § 915.306 of the regulations currently states that avocados must grade at least U.S. No. 2 but also allows for the commingling of different shapes and sizes within the same container. However, the provisions of the U.S. No. 2 grade require that avocados packed in the same container be similar in shape and size.

USDA requested that the Committee review the regulatory language in the Florida avocado regulations in regards to grade for shipments within the production area. The Committee responded that the language permitting commingling was added to the regulations in 1992 to allow handlers to ship quantities of fruit of different shapes and sizes in the same container to make more fruit

available for shipment within the production area.

Committee members agreed that handlers no longer use this provision as ample fruit is available to fill the containers with avocados of the same shape and size.

Consequently, in a June 12, 2013, meeting, the Committee recommended removing the language permitting commingling to align the regulations with current industry practices and with the United States Standards for Grades of Florida Avocados (7 CFR 51.3050 through 51.3069). This action removes the language permitting the commingling of avocados with dissimilar characteristics, requiring all avocados shipped within the production area to meet the requirements of a U.S. No. 2 grade, as provided in the United States Standards for Grades of Florida Avocados.

This action also makes a technical correction to the grade requirements under the avocado import regulation. Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. As it is the only marketing order covering avocados, import requirements are

based on the marketing order for avocados grown in South Florida.

The minimum grade requirement for Florida avocados shipped outside the production area was recently increased by a final rule (78 FR 51041) from a U.S. No. 2 to a U.S. Combination grade. The change in grade applies only to Florida avocados shipped outside the production area. The less restrictive U.S. No. 2 grade continues to apply to shipments within the production area and to imported avocados. As indicated in the final rule, this action makes a technical correction to the import regulation to clarify that the minimum grade requirement for imported avocados remains unchanged at a U.S. No. 2, which is the same grade requirement for avocados shipped within the production area.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. There are approximately 260 importers of avocados. Small agricultural service firms, which include avocado handlers and importers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011-12 season was approximately \$20.79 per 55-pound bushel container, and total shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment

information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported avocados was around \$1.1 billion in 2013. Using these values, most importers would have annual receipts of less than \$7,000,000 for avocados. Consequently, the majority of avocado handlers, producers, and importers may be classified as small entities.

Mexico, Chile, Peru, and Dominican Republic are the major production areas exporting avocados to the United States. In 2013, shipments of avocados imported into the United States totaled nearly 572,000 metric tons. Mexico accounted for around 509,700 metric tons, with 23,400 metric tons from Chile, 21,600 metric tons from Peru, and 17,000 metric tons were imported from the Dominican Republic.

This final rule removes language permitting the commingling of avocados with dissimilar characteristics for shipments within the production area. This requires all

avocados shipped within the production area to meet the provisions of a U.S. No. 2 grade, as provided in the United States Standards for Grades of Florida Avocados. This rule revises the grade requirements currently prescribed for Florida avocados shipped within the production area under § 915.306 of the regulations. This change aligns marketing order regulations with current industry practices and with the United States Standards for Grades of Florida Avocados. Authority for this action is provided in §§ 915.51 and 915.52 of the order. This action also makes a technical correction to the avocado import regulation, § 944.28, to clarify that the minimum grade requirement for imported avocados remains unchanged at a U.S. No. 2.

Any costs associated with this change are anticipated to be minimal. Committee members indicated that the industry no longer ships containers of dissimilar fruit within the production area. In addition, the volume of U.S. No. 2 grade Florida avocados shipped during the season is small, representing less than one percent of total annual shipments. Further, any impact from this action is limited to the volume of fruit shipped within the production area. Therefore, implementation of this rule is not expected to impact the volume of fruit being utilized

nor impact the total volume of Florida avocados on the market. There is no anticipated impact on import volume, as the change to those requirements is merely a clarification. The effects of this rule are not expected to be disproportionately greater or less for small handlers or growers than for large entities.

The only alternative the Committee considered was leaving the regulations for shipments within the production area unchanged. However, Committee members agreed that this language was outdated as the industry no longer commingles shapes and sizes in production area shipments. Therefore, this alternative was rejected.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes

become necessary, they would be submitted to OMB for approval.

Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. However, as previously stated, imported avocados and those shipped within the production area must meet the applicable requirements for grade, as specified in the United States Standards for Grades of Florida Avocados (7 CFR 51.3050 through 51.3069) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the Florida avocado industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2013, meeting was a public

meeting. All entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on June 23, 2014 (79 FR 35498). Copies of the rule were mailed or sent via facsimile to all Committee members and Florida avocado handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending July 23, 2014, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby

found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because Florida avocado handlers began shipping in mid-May, and the technical correction to the import regulation is to clarify that the grade requirement is unchanged. In addition, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 915 and 944 are amended as follows:

PART 915 - AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 915.306, paragraph (a)(1) is revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) * * *

(1) Such avocados grade at least U.S. Combination, except that avocados handled to destinations within the production area grade at least U.S. No. 2.

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PART 944 - FRUITS; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

4. In § 944.28, paragraph (a) is revised to read as follows:

§ 944.28 Avocado Import Grade Regulation.

(a) Pursuant to section 8e of the Act and Part 944-Fruits; Import Regulations, the importation into the United States of any avocados is prohibited unless such avocados

grade at least U.S. No. 2, as such grade is defined in the United States Standards for Grades of Florida Avocados (7 CFR 51.3050 through 51.3069).

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Dated: November 5, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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